

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL GAINES,

Plaintiff,

-v-

NEW YORK CITY DEPARTMENT OF
CORRECTION, *et al.*,

Defendants.

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No. 10 Civ. 189 (RJS) (KNF)
ORDERRICHARD J. SULLIVAN, District Judge:

On January 11, 2011, Plaintiff, proceeding *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights by failing to provide him proper footwear while he was in their custody, which caused him pain and injuries. By Order dated January 15, 2010, this Court referred the matter to Magistrate Judge Fox. On October 18, 2011, the parties filed a stipulation and order of settlement and dismissal with respect to the City Defendants. (Doc. No. 45.) Pursuant to Magistrate Judge Fox's Order dated October 31, 2011, the City Defendants provided Plaintiff with the names and addresses of vendors who provided footwear to the New York City Department of Correction to aid Plaintiff in ascertaining the identity of the remaining defendants. (Doc. No. 46.) By Order dated April 24, 2012, the Court directed Plaintiff to show cause, in writing, why the action should not be dismissed without prejudice for failure to serve the summons and complaint on the remaining defendants – "Manufacturers of footwear issued by N.Y.C.D.O.C." – as required by Rule 4(m) of the Federal Rules of Civil Procedure. (Doc. No. 48.) Plaintiff neither responded to the Order nor filed proof of service of the summons and Complaint on the remaining defendants.

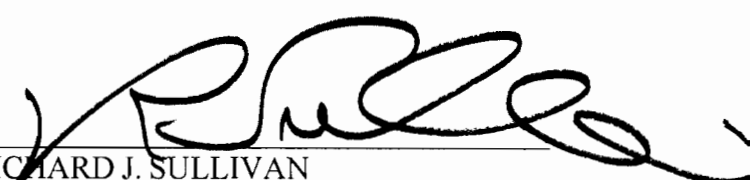
On June 12, 2012, Magistrate Judge Fox issued a Report and Recommendation (the "Report"), recommending that the instant action be dismissed without prejudice, pursuant to

Rule 4(m) of the Federal Rules of Civil Procedure. In the Report, Magistrate Judge Fox advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). Having reviewed Magistrate Judge Fox's Report, the Court finds that the reasoning and conclusions set forth therein are not facially erroneous. Accordingly, the Court adopts the Report in its entirety. For the foregoing reasons, IT IS HEREBY ORDERED that this case is dismissed without prejudice against Defendants "Manufacturers of footwear issued by N.Y.C.D.O.C." The Clerk of the Court is respectfully requested to close this case.

SO ORDERED.

Dated: August 20, 2012
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

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